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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

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8 **MARIO PANAUQUA, on Behalf of**
9 **Himself and All Others Similarly**
10 **Situated.**

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13
14 **MARIO PANAUQUA, on Behalf of**
15 **Himself and All Others Similarly**
16 **Situated,**

17 **Plaintiff,**

18 **v.**

19 **MARITZ RESEARCH INC., a**
20 **Missouri Corporation and DOES 1-**
21 **10, Inclusive,**

22 **Defendants.**

Case No. **CV 12-10419** - R6K
(MANA)

CLASS ACTION

CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:

1. **INVASION OF PRIVACY IN VIOLATION OF CALIFORNIA PENAL CODE SECTIONS 630 ET SEQ.**
2. **VIOLATION OF COMMON LAW RIGHT OF PRIVACY**
3. **NEGLIGENCE**

DEMAND FOR JURY TRIAL

Trial Date: None

23
24
25
26 Plaintiff Mario Panauqua ("Plaintiff"), individually, and on behalf of a Class of all
27 other, similarly situated persons defined below, demands a trial by jury and hereby
28 complains and alleges upon information and belief as follows:

INTRODUCTION

1
2 1. This Class Action Complaint challenges the policy and practice of
3 Defendants Maritz Research Inc. ("Maritz"), and DOES 1 through 10, inclusive
4 (collectively, "Defendants"), who surreptitiously record telephone conversations with
5 California consumers. Defendants' policy and practice violate the rights of consumers
6 under California's Invasion of Privacy Act, California Penal Code section 630 *et seq.*
7 (the "Privacy Act"), violate the common law right to privacy, and is negligent.

8 2. California's Constitution enshrines privacy as a protected, inalienable
9 right:

10 *All people are by nature free and independent and have inalienable rights.*
11 *Among these are enjoying and defending life and liberty, acquiring,*
12 *possessing, and protecting property, and pursuing and obtaining safety,*
13 *happiness, and privacy.*

14 Cal. Const. art. I, § 1 (emphasis added).

15 3. The common law tort of intrusion into private matters flows from
16 California's Constitution and encompasses unwarranted, sensory intrusions such as
17 eavesdropping, wiretapping, and the surreptitious recording of telephone
18 communications.

19 4. The Privacy Act enhances and specifically protects the right to privacy by
20 establishing specific protections against unlawful intrusions into private
21 communications, as explained in Penal Code section 630:

22 The Legislature hereby declares that advances in science and technology
23 have led to the development of new devices and techniques for the
24 purpose of eavesdropping upon private communications and that the
25 invasion of privacy resulting from the continual and increasing use of such
26 devices and techniques has created a serious threat to the free exercise of
27 personal liberties and cannot be tolerated in a free and civilized society.
28 The Legislature by this chapter intends to protect the right of privacy of
the people of this state.

29 5. The Privacy Act specifically prohibits secret recording of telephone
30 conversations:

31 ///

1 Every person who, intentionally and without the consent of all parties
2 to a confidential communication, by means of any electronic
3 amplifying or recording device, eavesdrops upon or records the
4 confidential communication, whether the communication is carried on
among the parties in the presence of one another or by means of a
telegraph, telephone, or other device, except a radio, shall be punished
by a fine

5 Cal. Penal Code § 632(a).

6 6. Defendants have systematically and repeatedly violated the Privacy Act
7 and the common law right to privacy, and in so doing, have breached their duties and
8 acted negligently, by surreptitiously recording telephone conversations with California
9 consumers.

10 7. Under California law, a telephone conversation is a confidential
11 communication that may not be recorded, regardless of the content of the conversation
12 or the type of telephone involved, unless the recording party first informs all parties to
13 the conversation that it will be recorded. Telephone users have objectively reasonable
14 expectations that their telephone conversations will not be overheard or recorded.
15 Informing all parties to a telephone conversation of the intent to record the conversation
16 permits a party who does not wish to be recorded to hang up or, if the party decides to
17 continue participating in the recorded conversation, to modify their tone or speech to
18 account for the fact that the conversation is being recorded.

19 8. California Penal Code section 632 is violated the moment the recording is
20 made without the consent of all parties thereto, regardless of whether it is subsequently
21 disclosed. The only intent required by Penal Code section 632 is that the act of
22 recording itself be done intentionally. There is no requisite intent on behalf of the party
23 doing the surreptitious recording to break California or any other law, or to invade the
24 privacy rights of any other person.

25 9. A person who suffers a privacy violation under California Penal Code
26 section 632 may bring a private action to recover damages. Cal. Penal Code § 637.2.
27 For each such violation, the injured party is entitled to the greater of the following
28 amounts: \$5,000 or three times the amount of any actual damages sustained. Cal. Penal

1 Code § 637.2(a). The injured party need not have suffered, or be threatened with, actual
2 damages. Cal. Penal Code § 637.2(c).

3 10. A plaintiff in such an action may also seek to enjoin further violations of
4 the Privacy Act. Cal. Penal Code § 637.2(b).

5 11. Plaintiff brings this Complaint on behalf of himself and all other California
6 residents whose telephone conversations were surreptitiously recorded by Defendants
7 between July 13, 2006 and the present (the "Class Period").

8 12. Plaintiff and the Class could not, and did not, consent to Defendants'
9 recording of their telephone conversations because Defendants did not warn Plaintiff
10 and the Class that these conversations were being recorded. Plaintiff and the Class, like
11 all members of the public, had objectively reasonable expectations that their telephone
12 conversations were confidential communications that would not be overheard or
13 recorded. Defendants thus violated the statutory rights to privacy of Plaintiff and the
14 Class under the Privacy Act, the common law right to privacy, and acted negligently in
15 so doing.

16 13. All of the allegations contained in this Complaint are based upon
17 information and belief, except for those pertaining to Plaintiff and his counsel.
18 Plaintiff's information and belief are based upon, among other things, the investigation
19 that Plaintiff and his counsel have conducted to date. The allegations in this Complaint
20 are substantiated by evidentiary support, or are likely to be substantiated by evidentiary
21 support upon further investigation and discovery.

22 PARTIES

23 14. Plaintiff is, and at all material times, has been, a California citizen residing
24 in Simi Valley, Ventura County, State of California.

25 15. Defendant Maritz is, and at all material times has been, a corporation
26 organized and existing under the laws of the State of Missouri, with headquarters in
27 Fenton, Missouri and offices in various states, including an office in Torrance,
28 California. Maritz provides consumer marketing research services to other companies.

1 Maritz describes the services it provides on its own website, www.maritzresearch.com,
 2 as including the design of studies, collection of data, performance of analysis, and
 3 reporting of results. According to a May 29, 2012 online job posting by Maritz, URL:
 4 <http://wahjobleads.com/jobs/interviewers/>, the company's operations include call
 5 centers that conduct consumer research by telephone and record all such calls with
 6 consumers. Maritz is operating and conducting business under the laws of the State of
 7 California and regularly conducts business throughout the Central District of California,
 8 including Ventura County, State of California.

9 16. The Defendants sued by the fictitious names DOES 1 through 10 are
 10 persons or entities whose true names and identities are currently unknown to Plaintiff.
 11 Plaintiff will amend this Complaint to allege the true names and capacities of these
 12 fictitiously named Defendants when they are ascertained. Each of the fictitiously named
 13 Defendants is responsible for the conduct alleged in this Complaint. Through their
 14 conduct, the fictitiously named Defendants actually and proximately caused the
 15 damages of Plaintiff and the Class.

16 17. In this Complaint, Defendants Maritz and DOES 1 through 10, inclusive,
 17 are sometimes referred to individually as "Defendant," and are sometimes referred to
 18 collectively as "Defendants," or "the Defendants."

19 18. At all times mentioned herein, each Defendant was acting as the agent
 20 and/or employee of each of the remaining Defendants and was at all times acting within
 21 the purpose and scope of such agency and employment. In doing the acts alleged
 22 herein, each Defendant, and its officers, directors, members, owners, principals, or
 23 managing agents (where the defendant is a corporation, limited liability company, or
 24 other form of business entity) authorized and/or ratified the conduct of each other
 25 Defendant and/or of his/her/its employees.

26 JURISDICTION AND VENUE

27 19. This Court has original jurisdiction over this action under the Class Action
 28 Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which (i) the

1 proposed class consists of more than 100 members; (ii) at least some members of the
2 proposed class are citizens of a state different from at least one of the defendants; and
3 (iii) the matter in controversy exceeds \$5,000,000, exclusive of interest and costs.

4 20. Venue is proper in the Central District of California, Western Division,
5 pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events that give rise to
6 the claims herein occurred in this District. In particular, Plaintiff is informed, believes,
7 and thereupon alleges that his telephone conversations with Defendants were recorded
8 by Defendants while he was within this District and Division.

9 FACTUAL BACKGROUND

10 21. Plaintiff is informed, believes, and thereupon alleges that during the Class
11 Period, Defendants have utilized certain computer hardware and software technology
12 (“Call Recording Technology”) to execute a company-wide policy and practice of
13 recording all telephone conversations with consumers.

14 22. Plaintiff is further informed, believes, and thereupon alleges that
15 Defendants installed and/or utilized Call Recording Technology on all of their
16 consumer-facing telephone lines. Plaintiff is further informed, believes, and thereupon
17 alleges that this Call Recording Technology enabled Defendants to record all of their
18 telephone conversations with consumers, and allowed them to store and listen to these
19 recordings for various purposes.

20 23. Plaintiff is further informed, believes, and thereupon alleges that
21 Defendants’ employees, agents, and representatives were directed, trained, and
22 instructed to, and did, record telephone conversations with consumers.

23 24. Plaintiff is further informed, believes, and thereupon alleges that
24 Defendants did not provide any verbal warnings or automated, pre-recorded warnings
25 to consumers who participated in a telephone conversation with Defendants that the
26 telephone conversation was recorded. Plaintiff is further informed, believes, and
27 thereupon alleges that, during the Class Period, Defendants did not provide any
28 periodically repeated, audible “beep tone” or other sound throughout the duration of a

1 telephone conversation to warn consumers that the call was recorded.

2 25. On June 8, 2012, at approximately 4:53 p.m. PST, Plaintiff received a
3 telephone call from Defendants at his home. Plaintiff participated in the telephone
4 conversation with an employee, agent, or representative of the Defendants, who
5 represented to Plaintiff that she was calling on behalf of Bank of America. Because
6 Plaintiff's telephone did not have caller ID, the Plaintiff at the time of the call did not
7 know that the call was coming from telephone number 571-431-1960 and that the
8 number was associated with Maritz. Thus, when the Maritz employee, agent, or
9 representative of the Defendants identified herself to Plaintiff as calling on behalf of
10 Bank of America, Plaintiff asked the employee, agent, or representative of the
11 Defendants to provide her telephone number to confirm that she was with Bank of
12 America. Thereafter, the employee, agent or representative of the Defendants started
13 yelling and appeared to become hostile toward the Plaintiff. In response, Plaintiff hung
14 up his telephone thereby terminating the call. At no time during this telephone
15 conversation did Plaintiff receive a warning from Defendants that the call was being
16 recorded.

17 26. Plaintiff initiated an investigation and made a complaint to Defendants
18 regarding this conversation and was advised in an e-mail dated June 14, 2012 from
19 Derek Mays, General Counsel of Maritz, that Mr. Mays had listened to the June 8, 2012
20 4:53 p.m. PST "sound file" of the telephone conversation between the Plaintiff and the
21 employee, agent or representative of the Defendants. Mr. Mays then provided Plaintiff
22 with certain information based on the recording of Plaintiff's telephone conversation.

23 27. Plaintiff is informed, believes, and thereupon alleges that Defendants
24 recorded the telephone conversation that took place on June 8, 2012 at approximately
25 4:53 p.m. PST between Plaintiff and the employee, agent, or representative of the
26 Defendants. Defendants failed to verbally warn Plaintiff, at the outset of this telephone
27 conversation, of Defendants' intent to record the conversation. Defendants failed to
28 provide an automated, pre-recorded warning or a periodically repeated beep tone or

1 other sound to warn Plaintiff during such call that the conversation was being recorded.
 2 Because Defendants failed to warn Plaintiff at the outset of the telephone conversation
 3 that the call was being recorded, Plaintiff was deprived of the ability to either decline to
 4 participate in a recorded call or to censor the content of the conversation. Plaintiff did
 5 not provide Defendants with consent to record the telephone conversation.

6 **CLASS ACTION ALLEGATIONS**

7 28. Plaintiff brings this action, on behalf of himself and all others similarly
 8 situated, as a class action pursuant to Federal Rule of Civil Procedure 23. This action
 9 may be brought and properly maintained as a class action because Plaintiff satisfies the
 10 numerosity, adequacy, typicality, and commonality pre-requisites for suing as a
 11 representative party pursuant to Rule 23.

12 29. **Class Definition.** The proposed, plaintiff Class that Plaintiff seeks to
 13 represent is preliminarily composed of and defined as follows:

14 All California residents who participated in one or more telephone
 15 conversations with employees, agents, or representatives of Defendants
 16 between July 13, 2006 and the present and did not receive a warning on
 the call that the telephone conversation was recorded.

17 30. Excluded from the Class are Defendants named herein; officers and
 18 directors of Defendants; members of the immediate family of any Defendant; any
 19 judges or justices to whom this action is assigned and their immediate families; and the
 20 legal representatives, heirs, successors, or assigns of any such excluded party.

21 31. Plaintiff reserves the right to amend or otherwise alter the Class definition
 22 presented to the Court at the appropriate time, or propose or eliminate sub-classes, in
 23 response to facts learned through discovery, legal arguments advanced by Defendants,
 24 or otherwise.

25 32. **Numerosity and Ascertainability.** The members of the Class are so
 26 numerous that joinder of all members is impracticable. Although the precise number of
 27 Class members is unknown to Plaintiff at this time, Plaintiff estimates that there are
 28 more than 100 and it is likely that there are thousands of putative Class members.

1 Moreover, the precise number of Class members and their addresses may be obtained
2 from a review of Defendants' own records. This information may then be used to
3 contact potential Class members.

4 33. **Typicality**. Plaintiff is a member of the Class. His claims are typical of the
5 claims of other members of the Class that he seeks to represent. Plaintiff alleges that
6 Defendants systematically recorded telephonic conversations without warning all
7 parties that these confidential communications were recorded, in violation of the
8 privacy rights of the Plaintiff and the Class under the Privacy Act and common law.
9 The harm that Plaintiff and all other Class members suffered arose from, and was
10 caused by, the same conduct by Defendants. Defendants have acted, or refused to act,
11 on grounds generally applicable to the Class, thereby making injunctive relief and
12 damages pursuant to California Penal Code section 637.2 and other damages available
13 under common law appropriate with respect to the Class as a whole.

14 34. **Adequacy of Representation**. Plaintiff will fairly and adequately
15 represent and protect the interests of the Class members. Plaintiff has retained counsel
16 that is competent and experienced in consumer class action litigation to ensure such
17 protection. Plaintiff and his counsel intend to prosecute this action vigorously for the
18 benefit of the Class. Plaintiff has no interests that are antagonistic to those of the Class.
19 Plaintiff has no interests that are in conflict with those of the Class.

20 35. **Superiority**. A class action is superior to other available methods for the
21 fair and efficient adjudication of this controversy for several reasons. First, it is unlikely
22 that putative Class members will pursue individual litigation because, unless notice is
23 sent to each putative Class member whose telephone conversation was recorded, Class
24 members will have no way to know that their privacy rights under the Privacy Act and
25 common law were violated. The very nature of Defendants' surreptitious recording
26 precludes knowledge of these privacy violations. Second, since the harm suffered by
27 each Class member is too small to warrant individual pursuit, especially in light of
28 technical issues regarding Defendants' call recording and retention systems, a class

1 action is the only viable method to obtain damages and other relief from Defendants for
 2 its violations of the Privacy Act and common law. Third, class treatment would be
 3 superior to adjudicating individual cases due to the much greater expense and burden
 4 that individual litigation would impose upon the courts. Fourth, if the Class members
 5 sought relief through individual actions, inconsistent or varying adjudications in their
 6 individual cases could establish incompatible standards of conduct for the Defendants.

7 36. **Predominance of Common Questions of Law and Fact.** There exists a
 8 well-defined community of interest in the questions of law and fact involved in this
 9 case against Defendants, and in obtaining appropriate relief for Defendants' statutory
 10 violations of the Privacy Act and the common law right to privacy. The following
 11 questions of law and fact common to the Class predominate over any individualized
 12 issues and the answers to those questions are apt to drive the resolution of the litigation:

- 13 a. Whether, during the Class Period, Defendants had a policy and
 14 practice of recording all telephone conversations with
 15 consumers;
- 16 b. Whether, during the Class Period, Defendants installed Call
 17 Recording Technology to implement their policy of recording all
 18 telephone conversations with consumers;
- 19 c. Whether, during the Class Period, the Defendants' employees,
 20 agents, or representatives were directed, trained, and instructed
 21 to, and did, record all of the Defendants' telephone conversations
 22 with consumers in order to implement the Defendants' policy
 23 and practice of recording all telephone conversations with
 24 consumers;
- 25 d. Whether, during the Class Period, Defendants' policy and
 26 practice of recording all telephone conversations with consumers
 27 included a policy and practice of warning Class members,
 28 including the Plaintiff, at the outset of each recorded telephone

- 1 conversation that the telephone conversation was recorded;
- 2 e. Whether, during the Class Period, Defendants failed to warn
- 3 Class members who participated in a telephone conversation
- 4 with the Defendants that the telephone conversation was
- 5 recorded;
- 6 f. Whether Defendants' recording of Plaintiff's and Class
- 7 members' telephone conversations without warning during the
- 8 Class Period constitutes violations of California Penal Code
- 9 section 632;
- 10 g. Whether Plaintiff and Class members are entitled to recover the
- 11 greater of statutory damages in the amount of \$5,000 for each
- 12 violation of California Penal Code section 632 pursuant to
- 13 Section 637.2(a)(1), or treble damages for each violation of
- 14 California Penal Code section 632 pursuant to section
- 15 637.2(a)(2);
- 16 h. Whether Plaintiff and Class members are entitled to injunctive
- 17 relief pursuant to California Penal Code section 637.2(b) to
- 18 enjoin or restrain the Defendants from committing further
- 19 violations of Penal Code section 632;
- 20 i. Whether Defendants' recording of Plaintiff's and Class
- 21 members' telephone conversations without warning during the
- 22 Class Period constitute violations of the common law right of
- 23 privacy;
- 24 j. Whether Defendants' recording of Plaintiff's and Class
- 25 members' telephone conversations without warning during the
- 26 Class Period was negligent;
- 27 k. Whether Plaintiff and Class members suffered harm as a result of
- 28 their telephone conversations being recorded without warning

during the Class Period;

l. Whether Defendants' conduct was a substantial factor in causing the harm suffered by Plaintiff and Class members;

m. Whether Plaintiff and Class members are entitled to recover damages and the measure of damages for each violation of the common law right of privacy; and

n. Whether Plaintiff and Class members are entitled to recover damages and the measure of damages for Defendants' negligent acts.

37. The core factual and legal issues are the same for all Class members: whether the Class member received one or more telephone calls from an employee, agent, or representative of Defendants during the Class Period; whether, at the outset of this telephone conversation, Defendants warned the Class member that the telephone conversation was recorded; and the measure of damages.

38. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

39. The nature of notice to the proposed Class is contemplated to be by direct mail and/or email upon certification of the Class or, if such notice is not practicable, by the best notice practicable under the circumstance including, *inter alia*, publication in major newspapers and on the internet.

40. The delayed discovery doctrine applies to toll the claims of Class members. Under the delayed discovery doctrine, the time for bringing these claims does not begin to run until a plaintiff discovers or should have discovered the injury. Thus, the limitations period for claims of Class members does not begin to run until Defendants produce to them copies of their recorded telephone conversations or otherwise admit to them to recording their telephone conversations. The very nature of Defendants' surreptitious recording precludes knowledge of these privacy violations. Because the recording was secretive in nature, Class members did not suffer an obvious

1 harm, where all essential facts are either known or knowable at the time the harm was
 2 caused, that would enable them to either know or suspect wrongdoing and therefore
 3 have sufficient knowledge to investigate and potentially assert claims. In addition to the
 4 tolling afforded the Class by the delayed discovery rule, the time period is also tolled
 5 by the filing of this putative class action.

6 **FIRST COUNT**

7 **STATUTORY INVASION OF PRIVACY**

8 **IN VIOLATION OF CALIFORNIA PENAL CODE SECTIONS 630 ET SEQ.**

9 41. Plaintiff repeats and realleges and reincorporates herein by this reference
 10 all of the foregoing paragraphs, above, as though set forth in full herein.

11 42. At all material times, California Penal Code section 632 was in full force
 12 and effect and was binding upon Defendants, and existed for the benefit of the Class
 13 members, including Plaintiff, all of whom are and/or were protected by the Privacy Act.

14 43. Plaintiff is informed, believes, and thereupon alleges that Defendants
 15 installed and/or caused to be installed Call Recording Technology on the telephone
 16 lines of all employees, agents, or representatives of Defendants who made or received
 17 consumer-facing telephone calls during the Class Period.

18 44. Plaintiff is further informed, believes, and thereupon alleges that
 19 Defendants maintained and utilized this Call Recording Technology with the intent to
 20 record each and every telephone conversation with consumers, and carry out
 21 Defendants' policy of recording each and every telephone conversation with
 22 consumers, during the Class Period.

23 45. Plaintiff is further informed, believes, and thereupon alleges that
 24 Defendants further directed, trained, and instructed their employees, agents, or
 25 representatives to record all telephone conversations with consumers in order to carry
 26 out this policy and practice during the Class Period.

27 46. Plaintiff is further informed, believes, and thereupon alleges that
 28 Defendants' policy and practice of recording all telephone conversations with

1 consumers failed to include a policy and practice that its employees, agents, or
2 representatives warn Class members, including Plaintiff, who participated in telephone
3 calls with Defendants during the Class Period, at the outset of each call that the
4 telephone conversation was being recorded by Defendants.

5 47. Plaintiff is further informed, believes, and thereupon alleges that
6 Defendants failed to warn the Class members, including the Plaintiff, at the outset of
7 each and every telephone conversation initiated or received by Defendants during the
8 Class Period that the conversation was recorded.

9 48. Defendants violated California Penal Code section 632 by recording
10 telephone conversations with Class members, including Plaintiff, during the Class
11 Period, without the consent of all parties to these conversations.

12 49. California Penal Code section 637.2 is a manifestation of the California
13 Legislature's determination that the privacy invasion arising from the non-consensual
14 recording of a confidential communication constitutes an affront to human dignity that
15 warrants a minimum of \$5,000 in statutory damages per violation, even in the absence
16 of proof of actual damages, or treble damages, whichever amount is greater, as well as
17 injunctive relief enjoining further violations. Defendants' surreptitious recordings of the
18 confidential communications of Plaintiff and the Class caused injury to Plaintiff and the
19 Class in the form of an affront to their human dignity, and damages in amounts to be
20 determined at the time of trial.

21 50. Based upon the foregoing, the Class members, including the Plaintiff, are
22 entitled to, and below do pray for, damages for each of Defendants' violations of
23 California Penal Code section 632 and for injunctive relief, as provided under Penal
24 Code section 637.2.

25 **SECOND COUNT**

26 **COMMON LAW INVASION OF PRIVACY**

27 51. Plaintiff realleges and reincorporates herein by this reference all of the
28 foregoing paragraphs, above, as though set forth in full herein.

1 52. Plaintiff and Class members are guaranteed by the California Constitution
2 and common law a right of privacy and a right to protection from unreasonable
3 intrusion into their private affairs.

4 53. Plaintiff and Class members had objectively reasonable expectations that
5 their telephone conversations with Defendants were private communications that were
6 not being overheard or recorded.

7 54. Plaintiff is informed, believes, and thereupon alleges that Defendants
8 intended to record Plaintiff's and Class members' telephone conversations by means of
9 Call Recording Technology, thereby intruding upon the private affairs of Plaintiff and
10 Class members.

11 55. This intrusion into Plaintiff's and Class members' right to privacy was
12 outrageous and highly offensive to Plaintiff and Class members, and is highly offensive
13 to a reasonable person.

14 56. As a direct result of the aforementioned conduct, Plaintiff and Class
15 members were harmed and suffered damages in an amount to be determined at the time
16 of trial.

17 **THIRD COUNT**

18 **DEFENDANTS' NEGLIGENCE**

19 57. Plaintiff realleges and reincorporates herein by this reference all of the
20 foregoing paragraphs, above, as though set forth in full herein.

21 58. Defendants had various statutory, Constitutional, and common law duties
22 not to engage in the secret recording of telephone conversations of Plaintiff and Class
23 members, without warning, such that Plaintiff's and Class members' rights to privacy
24 were invaded and breached by Defendants' secret recording of their telephone
25 conversations.

26 59. Defendants negligently and recklessly engaged in the afore-described
27 secret recording of telephone conversations of Plaintiff and Class members.

28 60. These activities by Defendants, as afore-described in this Complaint,

1 legally caused actual damages to the Plaintiff and Class members.

2 61. As a result of Defendants' secret recording activities, as described in this
3 Complaint, Plaintiff and Class members suffered an affront to their dignity, serious
4 emotional distress, inconvenience, anxiety, and upset. As a result of such injuries,
5 Plaintiff has suffered general damages according to proof.

6 62. Based on the foregoing, Plaintiff and Class members suffered economic
7 damages as a result of the Defendants' conduct. Plaintiff and Class members are
8 entitled to, and do herein pray for, their damages, according to proof at trial.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
11 situated, hereby prays that the Court determine that this action may be maintained as a
12 class action and further prays that the Court enter judgment in his favor and against the
13 Defendants, as follows:

14 1. For the greater of statutory damages pursuant to California Penal Code
15 section 637.2(a)(1) in the amount of \$5,000 per violation of Penal Code section 632, or
16 treble damages pursuant to California Penal Code section 637.2(a)(2) per violation of
17 Penal Code section 632;

18 2. For entry of a preliminary and permanent injunction pursuant to California
19 Penal Code section 637.2(b) prohibiting the Defendants from continuing to violate
20 Penal Code section 632;

21 3. Economic damages;

22 4. Non-economic damages; and

23 6. For such other and further relief as the Court may deem just and proper.

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KIESEL BOUCHER LARSON LLP
Attorneys at Law
Beverly Hills, California

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DATED: December 5, 2012

Respectfully submitted,

KIESEL BOUCHER LARSON LLP

By. 

PAUL R. KIESEL

THOMAS H. PETERS

JEFFREY A. KONCIUS

Attorneys for Plaintiff

MARIO PANAUQUA, on Behalf of Himself
and All Others Similarly Situated.

KIESEL BOUCHER LARSON LLP
Attorneys at Law
Beverly Hills, California

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the Class of all others similarly situated,
demands a trial by jury as to all issues so triable.

DATED: December 5, 2012

Respectfully submitted,

KIESEL BOUCHER LARSON LLP

By: 

PAUL R. KIESEL

THOMAS H. PETERS

JEFFREY A. KONCIUS

Attorneys for Plaintiff Mario Panaqua, on
Behalf of Himself and All Others Similarly
Situated.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge R. Gary Klausner and the assigned discovery Magistrate Judge is Margaret A. Nagle.

The case number on all documents filed with the Court should read as follows:

CV12- 10419 RGK (MANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

MARIO PANAQUA, on Behalf of Himself and All
Others Similarly Situated,

Plaintiff(s)

v.

MARITZ RESEARCH INC., a Missouri Corporation
and DOES 1-10, Inclusive,

Defendant(s)

CV12-10419 - RGN
Civil Action No. (MANA)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Maritz Research Inc.
1375 North Highway Drive
Fenton, MO 63099

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Paul R. Kiesel
Thomas H. Peters
Kiesel Boucher Larson LLP
8648 Wilshire Boulevard
Beverly Hills, CA 90211-2910

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: DEC - 5 2012

MARILYN DAVIS

Signature of Clerk



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) MARIO PANAQUA, on Behalf of Himself and All Others Similarly Situated		DEFENDANTS MARITZ RESEARCH INC., a Missouri Corporation and DOES 1-10, Inclusive	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Kiesel Boucher Larson LLP 8648 Wilshire Boulevard Beverly Hills, CA 90211		Attorneys (If Known)	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify):
 ☐ 6 Multi-District Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ \$5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Penal Code 5630

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: CV12-10419

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Ventura County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Missouri

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Ventura County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** December 5, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))